

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Docket No. 2637)

In re Application of:)	
)	
Baoquan Zhang et al.)	
)	Group Art Unit 2614
Serial No. 10/821,565)	
)	Examiner: Khai N. Nguyen
Filed: April 9, 2004)	
)	Confirmation No. 1278
For: METHOD AND SYSTEM FOR)	
PREVENTING ENDLESS LOOPING)	
DURING TELEPHONE CALL SETUP)	

Mail Stop Patent Ext.
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION
OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. 1.705(b)-(d)**

Dear Sir:

Responsive to the Determination of Patent Term Adjustment mailed April 3, 2009,
Applicant submits this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R.
1.705(b)-(d). As stated in 37 C.F.R. 1.705(b):

Any request for reconsideration of the patent term adjustment indicated in the notice of allowance, except as provided in paragraph (d) of this section, and any request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) must be by way of an application for patent term adjustment. An application for patent term adjustment under this section must be filed no later than the payment

of the issue fee but may not be filed earlier than the date of mailing of the notice of allowance.

The Notice of Allowance was mailed April 3, 2009, and Applicant has yet to pay the issue fee. Therefore, this request complies with the deadline specified in 37 C.F.R. 1.705(d), and Applicant submits that this request is timely.

The Determination of Patent Term Adjustment indicates that this matter has been granted an 852 day Patent Term Adjustment. Applicant submits that this adjustment may be erroneous in Applicant's favor but is also erroneous in the Patent Office's favor.

a. Possible Error in Applicant's Favor

The Office appears to have granted a 54 day patent term increase for the period running from Applicant's filing of a response on April 1, 2008, through the Office's mailing of a new non-final office action on September 24, 2008. That 54 days would apparently account for the fact that 54 days more than the permitted 4 month period passed from April 1, 2008 to September 24, 2008 (i.e., 54 days from August 1, 2008, to September 24, 2008). However, during that period, the Office mailed an advisory action, and Applicant then took an extension of time for filing a notice of appeal. Applicant respectfully requests the Office to consider the prosecution that occurred during that duration of time, and to determine whether the 54 days was properly granted to Applicant for that period.

b. Error in the Office's Favor

Under *Wyeth v. Dudas*, No. 07-1492, slip op. (D.D.C. Sept. 30, 2008), Applicant submits that the Office erred in the determination of patent term adjustment by not including in the adjustment any "B" delay, which are the days delay resulting from an application pending longer than three years. According to 37 C.F.R. 1.703(b):

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued...

The present application was filed on April 9, 2004, and the Notice of Allowance was mailed April 3, 2009, which is 3 years plus 725 days after the filing date, resulting in a "B" delay of at least 725 days.

The *Wyeth* decision states that "the 'A period' and 'B period' overlap only if they occur on the same calendar day or days" (*Wyeth*, No. 07-1492, slip op. at 8). Thus, according to the *Wyeth* decision, patentees are entitled to both the "A delay" and the "B delay" minus any overlap that occurs on the same calendar days. In this case, there is an overlap of 129 same calendar days between the "A delay" (namely, the delay to mailing of a first office action) and the "B delay" for the time period of April 9, 2007, to August 16, 2007. Furthermore, if the Office's determination of 54 days of adjustment for the period April 1, 2008, to September 24, 2009, was correct, then there is another overlap of 54 days for that period. Thus, the total Patent Term Adjustment due to both the "A" and "B" delays and minus the overlap is 1394 days ($852 + 725 - 129 - 54 = 1394$).

c. Conclusion

For these reasons, if the Office concludes that the 54 day adjustment discussed above was correct, then the patent term adjustment for this case should be 1394 days. On the other hand, if the Office concludes that part or all of the 54 day adjustment discussed above was incorrect, then the patent term adjustment for this case should still be at least 1340 days. In light of the

foregoing, Applicant respectfully requests that the Office correct the patent term adjustment to be the applicable number of days.

If a telephone conference would expedite the prosecution of this Request for Reconsideration of Patent Term Adjustment, please contact the undersigned attorney at (312) 913-2141.

Respectfully submitted,

**McDONNELL BOEHNEN
HULBERT & BERGHOFF LLP**

Dated: April 23, 2009

By: /Lawrence H. Aaronson/
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